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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,901	12/10/2003	Jonathan Maron	19111.0118	5193
23517 7590 03/21/2007 BINGHAM MCCUTCHEN LLP 2020 K Street, N.W. Intellectual Property Department WASHINGTON, DC 20006			EXAMINER KANG, INSUN	
			ART UNIT	PAPER NUMBER
			2193	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/21/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/730,901	MARON, JONATHAN	
	Examiner	Art Unit	
	Insun Kang	2193	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is responding to application papers dated 12/10/2003.
2. Claims 1-28 are pending in the application.

Drawings

3. Figure 1, 4, and 5 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.
4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 522 and 524 in Fig. 5.
5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: "302A-D" in page 14, line 2.
6. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "410" have been used to designate both "code generation objects (page 18, line 19) and "performance measurement objects (page 19, line 15).

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Also the reference character "412" for "SAX objects (page 18, line 19)" and "interface objects (page 19, line 16)."

Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

7. The disclosure is objected to because of the following informalities: in page 10, "standardize6d" in line 10 needs to be corrected to "standardized."

8. Applicant is reminded of the proper content of an abstract of the disclosure.

A patent abstract is a concise statement of the technical disclosure of the patent and should include that which is new in the art to which the invention pertains. If the patent is of a basic nature, the entire technical disclosure may be new in the art, and the abstract should be directed to the entire disclosure. If the patent is in the nature of an improvement in an old apparatus, process, product, or composition, the abstract should

include the technical disclosure of the improvement. In certain patents, particularly those for compounds and compositions, wherein the process for making and/or the use thereof are not obvious, the abstract should set forth a process for making and/or use thereof. If the new technical disclosure involves modifications or alternatives, the abstract should mention by way of example the preferred modification or alternative.

The abstract should not refer to purported merits or speculative applications of the invention and should not compare the invention with the prior art. However, the abstract refers to purported merits of the invention in lines 4-6.

Appropriate correction is required.

Claim Objections

9. Claims 5-7, 12-14, 19-21, 27, and 28 are objected to because of the following informalities: Per claims 5, 6, 12, 13, 19, 20, 27, and 28, these claims use inappropriate capital letters such as in "Thread Pool Size." As per claims 7, 14, and 21, these claims are objected for dependency on the above objected parent claims. Appropriate correction is required.

Claim Rejections - 35 USC § 112

10. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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11. Claims 1-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Per claims 1, 15, and 22:

It is unclear what "application parameters" in claim 1 (line 5), 15 (line 8), and 22 (line 3) are. Interpretation: "application parameters of the application." It is unclear as to what application tuning parameters in claim 1 (line 6), 15 (line 9), and 22 (line 4) they are referring. They are interpreted as: the retrieved application tuning parameters.

Per claim 3:

In line 1, it is unclear on which claim it is dependent correctly. It is interpreted as: "The method of claim 2." In line 1, "application parameters" is interpreted as: "the application parameters." In line 3, "current values of application parameters" is interpreted as: "the current values of the application parameters."

Per claims 4, 11, 18, and 25:

In line 3, it is unclear as to what values they are referring. Interpretation: "the current values."

Per claims 5, 12, 19, and 27:

In line 1 (claims 5, 12, 19) and 2 (claim 27), "the values of application parameters" is interpreted as: "the specified values of the application parameters."

Per claim 8:

In lines 4 and 6, "computer program instructions" is interpreted as: "the computer program instructions." In line 10, "application parameters" is interpreted as: "application

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parameters of the application.” In line 11, it is unclear as to what application tuning parameters they are referring. They are interpreted as: the retrieved application tuning parameters.

Per claims 10, 17, and 24:

The limitation, “application parameters” in claims 10 (line 1), 17 (line 2), and 24 (line 2) is interpreted as: “the application parameters.” The limitation in line 3, “current values of application parameters” in claims 10, 17, and 24 is interpreted as: “the current values of the application parameters.”

As per claims 2, 6, 7, 9, 13, 14, 16, 20, 21, 23, and 26, these claims are rejected for dependency on the above rejected parent claims 1, 8, 15, and 22.

Claim Rejections - 35 USC § 101

12. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

13. Claims 1-7 and 15-28 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 15-21 are non-statutory because they are directed to a product comprising a computer readable medium that includes a “transmission-type” medium (i.e. signal, digital and analog communications links) as recited in the instant specification (i.e. page 28). Such a medium does not have a physical structure, rather it is the physical characteristics of a form of energy, such as a frequency, voltage, or the

strength of a magnetic field, define energy or magnetism *per se*. Moreover, it does not fit within the definition of the categories of patentable subject matter set forth in § 101. Thus the claims represent non-functional descriptive material that is not capable of producing a useful result, and hence represent only abstract ideas. Therefore, the claims are non-statutory.

Claims 1-7 and 22-28 are non-statutory because they are directed to a "method" and "component" without recitation of a computer or a computer-readable medium (excluding a non-tangible medium) embodying the steps recited. The claimed method and "component" are disembodied arrangements so as to be called a "computer program" or compilation of facts, information, or data *per se*, without creating any functional interrelationship, either as part of the stored data or as part of the computing processes performed by the computer ("acts") or computer readable medium so as to enable the computer to perform the claimed steps. Thus the claims represent non-functional descriptive material that is not capable of producing a useful result, and hence represent only abstract ideas. Therefore, the claims are non-statutory.

The following link on the World Wide Web is for the United States Patent And Trademark Office (USPTO) policy on 35 U.S.C. §101. The following link on the World Wide Web is for the United States Patent And Trademark Office (USPTO) policy on 35 U.S.C. §101.

http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/guidelines101_20051026.pdf

Double Patenting

14. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

15. Claims 1-28 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-44 of copending Application No.10/730897 hereafter '897 in view of Dumarot et al. (US patent. RE38865) hereafter "Dumarot."

Although the conflicting claims are not identical, they are not patentably distinct from each other because they are directed to substantially the same invention and recites only obvious differences which would have been obvious to one of ordinary skill in the art of program development at the time of invention such as simply (i) omitting/adding steps or elements along with their functions, and/or (ii) implementing the method steps with means for performing the steps, and/or (iii) computer program implementation of the method, and/or (iv) implementing a system, product, tuning tool having computer program for performing the method steps.

The following example is given:

Per claim 1:

The copending application '897 claims:

A method of tuning an application deployed in an application server, comprising the steps of: (*"A method of tuning an application deployed in an application server, comprising the steps of," claim 1*)

deploying the application in the application server; (*"deploying the application in the application serve," claim 1*);

invoking an application tuning server-side component operable to retrieve information relating to application parameters to be tuned (*"invoking an application tuning tool to display an interface including displays of current values of application parameters and measurements of performance of the application," claim 1*)

The instant claim does not explicitly recite displaying interface including displays of current values of application parameters and measurements of performance of the application, wherein the interface displays emphasize importance of a particular parameter over another parameter, as recited in co-pending claim 1. However, Dumarot teaches such a display interface was known in the pertinent art, at the time applicant's invention was made, to display the configuration setting for user convenience (i.e. "current CPU use...other activity...a graphical user interface...that displays such activity in graphical form," col. 5 lines 55-67; Fig 3; "drag-and-drop GUI," col. 2 lines 6-67). It would have been obvious for one of ordinary skill in the art of program development at the time the instant invention was made to modify the instant claim to add the step of displaying recited in co-pending claim 1 for the

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purpose of expediting the method and to incorporate the teachings of Dumarot. The modification would be obvious because one having ordinary skill in the art would be motivated to allow users to easily view or adjust the configuration settings (col. 5 lines 55-67; Fig 3; "drag-and-drop GUI," col. 2 lines 6-67).

The copending application '897 further claims:

receiving specifications of values of application tuning parameters (*"receiving specifications of values of application tuning parameter," claim 1*);

and tuning the application using the received specified parameter values (*"tuning the application using the received specified parameter value," claim 1*).

This is a provisional obviousness-type double patenting rejection.

Claim Rejections - 35 USC § 102

16. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

17. Claims 1-4, 8-11, 15-18, and 22-25 are rejected under 35 U.S.C. 102(e) as being anticipated by Dumarot et al. (US patent. RE38865) hereafter "Dumarot."

Per claim 1:

Dumarot discloses:

-tuning an application deployed in an application server (i.e. "*adjust system or application parameters in order to optimize the operation of the application*," col. 7, lines 1-25; col. 6 lines 20-26; "an optimization process 300 that the *local computer 12 or server 130 uses to optimize software applications 138* and system response or utilization, or to provide recommendations 480... the optimizer 136 gathers relevant system information including: operating system 150 version and release data, installed hardware components, hardware configuration, and software configurations (col. 5, lines 34-41);

-deploying the application in the application server; (i.e. "*program application performance on a computer system ... configuration information and performance capabilities based on characteristics of the program/system ...the configuration information and the performance capabilities are used to optimize configuration parameters of the program applications so as to enhance the performance of the workstation in running the program system*," col. 3 lines 40-52)

-invoking an application tuning server-side component operable to retrieve information relating to application parameters to be tuned (i.e. "The optimization database table ...the *optimizer program*...on the local computer and/or the remote computer. The optimizer program *contains or accesses* a dynamic monitor 137 of system and application activity...*particular settings of the application* that may affect application performance," col. 4, lines 43-59; "the optimizer 136 gathers relevant

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system information...the optimizer may query the current CPU use, memory use, or other activity," col. 5, lines 37-59)

-receiving specifications of values of application tuning parameters (i.e. "The *optimizer program* 136 may contain a graphical user interface 139, used to *specify settings or provide information to the user.*(col. 4, lines 55-58)

-and tuning the application using the received specified parameter values (i.e. "the optimizer ... can *adjust the following parameter settings* ...to adjust performance," col. 6 lines 9-26).

Per claim 2:

Dumarot further discloses:

-wherein the step of invoking the application tuning server-side component is performed in response to an action by an administrator, engineer, or user of the application server (i.e. "user-specified preferences," col. 3, lines 15-20; the user may enter text or data ... that specifies a level of optimization ...application settings," col. 6 lines 9-20).

Per claim 3:

Dumarot further discloses:

- wherein the information relating to application parameters to be tuned comprises: current values of application parameters and measurements of performance of the application (i.e." the optimizer may query the current CPU use,

memory use, or other activity," col. 5, lines 56-59; "control various parameters 420, associated with a particular application name," col. 5 lines 41-55).

Per claim 4:

Dumarot further discloses:

-wherein the application tuning server-side component is operable to accept input from the administrator, engineer, or user to specify values of the application parameters(i.e. "user-specified preferences," col. 3, lines 15-20; the user may enter text or data ... that specifies a level of optimization ... application settings," col. 6 lines 9-20).

Per claims 8-11, they are the system versions of claims 1-4, respectively, and are rejected for the same reasons set forth in connection with the rejection of claims 1-4 above.

Per claims 15-18, they are the product versions of claims 1-4, respectively, and are rejected for the same reasons set forth in connection with the rejection of claims 1-4 above.

Per claims 22-25, they are the application component versions of claims 1-4, respectively, and are rejected for the same reasons set forth in connection with the rejection of claims 1-4 above.

Claim Rejections - 35 USC § 103

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18. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

19. Claims 5, 6, 12, 13, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dumarot et al. (US patent, RE38865) hereafter "Dumarot," as applied to claims 1-4, 8-11, 15-18, and 22-25 above, in view of Applicant's Admitted Prior Art (hereinafter referred to as "APA") disclosed in the instant application.

Per claim 5:

Dumarot discloses adjusting application parameters for optimal performance (i.e. col. 7, lines 1-25; col. 6 lines 20-26) but does not explicitly teach that the values of application parameters comprise at least one of: Database Connection Pool size, Thread Pool Size, HTTP connection pool size, HTTP incoming connection queue length, HTTP Socket timeout, Session pool size, and Java Virtual Machine tuning parameters. However, APA teaches tuning such configuration parameters were known in the pertinent art, at the time applicant's invention was made, to minimize response time or maximize throughput etc ("modification of multiple configuration parameters such as thread pool size, connection pool size, transaction timeout period, various Java Virtual Machine...parameters," page 1). It would have been obvious for one having ordinary skill in the art to modify Dumarot's disclosed system to incorporate the teachings of APA. The modification would be obvious because one having ordinary skill

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in the art would be motivated to optimize performance by tuning configuration parameters such as thread pool size (page, lines 19-21) as suggested by APA.

Per claim 6:

APA further discloses:

wherein the measurements of performance of the application comprise at least one of: Overall transactions per second, Average Request Time, HTTP transactions per second, Database connections used, HTTP connections used, Active thread count, Overall throughput, Database throughput, HTTP throughput (i.e. "application performance is typically measured in terms of response time, transactions per second, throughput etc," page 1, lines 13-18).

Per claims 12 and 13, they are the system versions of claims 5 and 6, respectively, and are rejected for the same reasons set forth in connection with the rejection of claims 5 and 6 above.

Per claims 19 and 20, they are the product versions of claims 5 and 6, respectively, and are rejected for the same reasons set forth in connection with the rejection of claims 5 and 6 above.

20. Claims 7, 14, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dumarot et al. (US patent. RE38865) hereafter "Dumarot," in view of Applicant's Admitted Prior Art (hereinafter referred to as "APA") disclosed in the instant application,

and further in view of Bowker ("Superior app management with JMX," JavaWorld, 6/8/2001).

Per claim 7:

Dumarot and APA disclose tuning configuration parameters but neither Dumarot nor APA explicitly discloses that the application tuning server-side component is implemented using Java Management Extensions. However, Bowker teaches JMX was known in the pertinent art, at the time applicant's invention was made, to enable to "query the configuration settings and change them during runtime (i.e. page 1, lines 1-4). It would have been obvious for one having ordinary skill in the art to modify the disclosed system of Dumarot in view of APA to incorporate the teachings of Bowker. The modification would be obvious because one having ordinary skill in the art would be motivated to create a consistent approach to managing applications in real time (i.e. page 1, lines 1-4) as suggested by Bowker.

Per claim 14, it is the system version of claim 7, respectively, and is rejected for the same reasons set forth in connection with the rejection of claim 7 above.

Per claim 21, it is the product version of claim 7, respectively, and is rejected for the same reasons set forth in connection with the rejection of claim 7 above.

21. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dumarot et al. (US patent. RE38865) hereafter "Dumarot," in view of Bowker ("Superior app management with JMX," JavaWorld, 6/8/2001).

Per claim 26:

Dumarot disclose an optimizer tuning configuration parameters but Dumarot does not explicitly disclose that the optimizer is implemented using Java Management Extensions. However, Bowker teaches JMX was known in the pertinent art, at the time applicant's invention was made, to enable to "query the configuration settings and change them during runtime (i.e. page 1, lines 1-4). It would have been obvious for one having ordinary skill in the art to modify the disclosed system of Dumarot to incorporate the teachings of Bowker. The modification would be obvious because one having ordinary skill in the art would be motivated to create a consistent approach to managing applications in real time (i.e. page 1, lines 1-4) as suggested by Bowker.

22. Claims 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dumarot et al. (US patent. RE38865) hereafter "Dumarot," in view of Bowker ("Superior app management with JMX," JavaWorld, 6/8/2001), and further in view of Applicant's Admitted Prior Art (hereinafter referred to as "APA") disclosed in the instant application.

Per claim 27:

Dumarot discloses adjusting application parameters for optimal performance (i.e. col. 7, lines 1-25; col. 6 lines 20-26) and Bowker discloses a configuration management tool of any application server, JMX (page 1, lines 1-4) but neither Dumarot nor Bowker

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explicitly teach that the values of application parameters comprise at least one of:

Database Connection Pool size, Thread Pool Size, HTTP connection pool size, HTTP incoming connection queue length, HTTP Socket timeout, Session pool size, and Java Virtual Machine tuning parameters. However, APA teaches tuning such configuration parameters were known in the pertinent art, at the time applicant's invention was made, to minimize response time or maximize throughput etc ("modification of multiple configuration parameters such as thread pool size, connection pool size, transaction timeout period, various Java Virtual Machine...parameters," page 1). It would have been obvious for one having ordinary skill in the art to modify the systems of Dumarot and Bowker to incorporate the teachings of APA. The modification would be obvious because one having ordinary skill in the art would be motivated to optimize performance by tuning configuration parameters such as thread pool size (page, lines 19-21) as suggested by APA.

Per claim 28:

APA further discloses:

wherein the measurements of performance of the application comprise at least one of: Overall transactions per second, Average Request Time, HTTP transactions per second, Database connections used, HTTP connections used, Active thread count, Overall throughput, Database throughput, HTTP throughput (i.e. "application performance is typically measured in terms of response time, transactions per second, throughput etc," page 1, lines 13-18).

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23. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Insun Kang whose telephone number is 571-272-3724. The examiner can normally be reached on M-R 6:30-5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MENG AI AN can be reached on 571-272-3756. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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